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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2780 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HERIS OF RAJGOR V SHANKARJI

Versus

RAMLLAKSHMI WD/O RAVISHANKAR GAGUBHAI

Appearance:

MR YS MANKAD for Petitioners

MR PM BHATT for Respondent No. 1

MR.R.V. DESAI A.G.P. for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/02/2001

C.A.V. JUDGEMENT

1. The present petition has been filed under Article 227 of the Constitution of India for challenging the judgment and order of the learned Gujarat Revenue Tribunal dated 25.1.1989/7.2.1989 recorded by the Additional Chief Secretary, Revenue Department, (Appeals), Government of Gujarat, Ahmedabad, in appeal No.SRD-Kutch-INAM-1/86, under which the Government dismissed the said appeal of the present petitioner and confirmed the order of the learned Mamlatdar dated 25.6.1985. The petitioner above-named contended that he was a tenant in respect of the land described in para 1 of the petition. At the initial stage he was held to be a tenant of the said land and the land was held to be Inami land. However the respondent above-named preferred Special Civil Application before this court being Special Civil Application No.766 of 1997. The said petition was disposed of by this court (Coram B.K.Mehta, J as he then was) on 24.2.1982. The learned Judge of this court was pleased to quash and set-aside the earlier orders of the revenue authorities and was further pleased to remand the matter to the Mamlatdar for determining the following two issues.

(a) Whether the land in question was Inam land? And, if yes, what was the category of it?

(b) Who was the person in possession and what was the nature of his possession?

2. Therefore the Special Mamlatdar conducted the matter again and thereafter he came to a decision that the land in question was not an Inami land and the present petitioner was not a tenant in respect thereof. Feeling aggrieved by the said order of the Special Mamlatdar, the petitioner preferred the aforesaid appeal which came to be dismissed by Government by order dated 25.1.1989/7.2.1989, confirming the order of the Special Mamlatdar dated 25.1.1989. Feeling aggrieved by the said order of the Government, the petitioner has preferred this petition under Article 227 of the Constitution of India. It has been mainly contended here that the revenue authorities have not properly appreciated the provisions of law and have committed serious error in not holding that the land in question is Inami land and that the petitioner is a tenant in respect thereof. It is therefore prayed that the orders of the revenue authorities mentioned herein above be quashed and set-aside and the land in question may be declared to be Inami land and the petitioner be declared to be the tenant in respect of the said land. Rule was issued and

interim relief protecting the possession of the petitioner was granted. The constituted attorney of the first respondent has filed affidavit in reply which is placed at page 62. There it has been contended that the land in question is not an Inami land and the petitioner was never a tenant in respect thereof. I have heard the learned advocates for the parties and have perused the papers.

3. The learned advocate for the petitioner Mr.Y.S.Mankad has taken me through the records of this petition in order to argue that the finding recorded by the revenue authorities is illegal and that the land in question is really an Inami land. Now the aforesaid authorities have considered that Virad was being paid in respect of the said land. That in case of Inami land Virad was not required to be paid. That since Virad is proved to have been paid for quite a long time, the land in question could not be treated to be Inami land. Now on this point there is no other material to show that Virad was not paid at any point of time. Once it is shown from the record that Virad was being paid and when the aforesaid authorities have recorded findings of facts that Virad was being paid, then, there is no reason to discard the said findings based on fact. It is more so when the finding is also based on the evidence adduced before the said authorities. At present this court is not exercising the appellate power or jurisdiction. This court is exercising constitutional function and jurisdiction and therefore the finding of fact cannot be reversed by this court, unless it is found to be contrary to the evidence on record. The said authorities have appreciated the evidence and after appreciation of evidence they came to a finding of fact that Virad was paid in respect of the land in question. Once the Virad is proved to have been paid, then, it cannot be said that the land in question is Inami Land; since no Virad was required to be paid in respect of Inami land.

4. Another aspect of the case is that under the Bombay Inami Abolition Act, 1958, Kami-Pasa land could be treated to be Inami land. Now as per the records the land in question is shown to be Pasa land. It is not shown to be Kami-Pasa land. The learned advocate for the petitioner has argued at length that the Pasa land and Kami-Pasa land carry different names in respect of the same type of land. However, he was not in a position to show either from law or from record that Pasa land and Kami-Pasa land are the same. In other words he is not able to show from any record or from any law that Pasa land is another name of Kami-Pasa land or that the Pasa

land is equal to Kami-Pasa land in all aspects and therefore, in absence of any record or law shown to me it is not possible for me to hold that the land in question which is shown to be Pasa land can be treated to be Kami-Pasa land. Once the land in question cannot be treated to be Kami Pasa land then in that event it cannot be treated to be Inami land. Once the land is not shown or proved to be Inami land then the petitioner could not be treated to be a tenant in respect thereof. It is to be seen that while remanding the matter to the Mamlatdar for determination of the aforesaid two issues, this court had directed that evidence may be collected on the said issues. The petitioner had ample opportunity to prove his case before the learned Mamlatdar. It seems that he could not place material before the said authority in order to substantiate his plea about the nature of land and the nature of his possession in respect of the said land.

5. Therefore on appreciation of evidence before him, the learned Mamlatdar has determined the aforesaid issues. The said finding is a finding of fact which has been upheld by the Government in appeal. Therefore this finding of fact cannot be altered or reverse in this petition by this court exercising extraordinary constitutional function and jurisdiction and not acting as a court of appeal. The learned advocate for the petitioner was unable to state that there is further material to show that the findings recorded by the said authorities are illegal and perverse. In that event it is not open to this court to differ from the view taken by the said authorities. This would clearly show that there is no merit in the present petition. Consequently the petition deserves to be dismissed. In view of the above matter this petition is ordered to be dismissed. Rule stands discharged. Interim relief granted earlier stands vacated. There shall be no order as to costs.

9.2.2001 (D.P.Buch, J).

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